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9  
10           **UNITED STATES BANKRUPTCY COURT**  
11           **EASTERN DISTRICT OF WASHINGTON**

12           In re:  
13           GIGA WATT, Inc., a Washington  
14           corporation,  
15           Debtor.

16           Case No. 18-03197 FPC 11

17           The Honorable Frederick P. Corbit  
18           Chapter 7

19           MARK D. WALDRON, as Chapter 7  
20           Trustee,

21           Adv. Case No. 20-80031

22           **FIRST AMENDED COMPLAINT**

23           Plaintiff,  
24           vs.  
25           PERKINS COIE LLP, a Washington  
1           limited liability partnership,  
2           LOWELL NESS, individual and  
3           California resident, GIGA WATT  
4           PTE., LTD., a Singapore corporation,  
5           ANDREY KUZENNY, individual and  
6           Russian citizen, TIMUR USMANOV,  
7           individual and Russian citizen,

8           Defendants,

9           - and -

10           THE GIGA WATT PROJECT, a  
11           partnership,

12           Nominal Defendant.

13           **FIRST AMENDED COMPLAINT – Page 1**

Mark D. Waldron, in his capacity as the duly appointed Chapter 7 Trustee, by and through his attorneys, the Potomac Law Group PLLC, for his Complaint against Perkins Coie LLP (“Perkins Coie”) alleges as follows:

## **SUBJECT MATTER JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This action is related to the bankruptcy case.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

## PARTIES

3. Plaintiff is the duly appointed Trustee in the above-captioned bankruptcy case pursuant to the *Appointment of Trustee*, dated September 30, 2020. Plaintiff also served as the Chapter 11 Trustee pursuant to the *Order Approving Appointment of Chapter 11 Trustee*, entered on June 24, 2019 before the case converted to chapter 7 pursuant to the *Order Converting Case to Chapter 7*, entered on September 30, 2020.

4. The above-captioned debtor, Giga Watt, Inc. (“Giga Watt”) is a Washington corporation. On December 15, 2016, a Russian national named Katrina Kovalyeva a/k/a Katrina Grant, a/k/a Katrina Arden filed Giga Watt’s Articles of Incorporation with the Washington Secretary of State.

5. Perkins Coie LLP (“Perkins”) is a limited liability partnership formed under the laws of Washington State. It maintains offices in Seattle, Palo Alto, and numerous other cities worldwide. Perkins is the 16<sup>th</sup> largest law firm in the United States. It was named one of the “Top Five Law Firms for Startups” in 2019.

FIRST AMENDED COMPLAINT – Page 2

1 (Kruze) and won the Technology/Telecom Deal of the Year” by The Deal Awards  
2 in 2019.

3       6. Lowell Ness (“Ness”) resides in or around Palo Alto, California. He  
4 is a partner of Perkins in the firm's Corporate practice, regularly acting as either  
5 company counsel or investors' counsel in venture capital financings. Perkins'  
6 website adds that Ness is:

7           a core member of the Blockchain Technology and Digital Currency  
8 industry group where he focuses part of his practice on assisting  
9 Blockchain, Bitcoin and other cryptocurrency clients raise money by  
maintaining relationships with key venture capital groups and other  
potential investors in the industry.

10 Ness earned a B.A. (*cum laude*) from the University of Pennsylvania in 1989. He  
11 earned a J.D. (*cum laude*) in 1994 from Georgetown University Law Center. He  
12 speaks French and Russian. Ness and Perkins are referred to herein collectively as  
13 “Perkins.”

14       7. GigaWatt Pte. Ltd. (“GW Sg.”) was incorporated under the laws of  
15 Singapore on December 28, 2016. As of March 2017, Sergey Pashentsev, an auto  
16 mechanic in rural Russia, was GW Sg.’s director, sole member, and sole  
17 shareholder. Andrey Kuzenny (discussed below) pretended to be Pashentsev when  
18 setting up a PayPal account that linked to GW Sg.’s bank account. The emails  
19 state that they are from Sergey Pashentsev. But when one clicks on the email  
20 address it reveals Andrey Kuzenny’s address. Later, Pashenstev was replaced as  
21 director by a person named Marina Mikhaylyuta (“Mikhaylyuta”). Mikhaylyuta  
22 sent all her emails from an administrative account, admin@gigawatt.sg. Mail sent

24 FIRST AMENDED COMPLAINT – Page 3  
25

1 to the address listed on GW Sg.’s proof of claim has been returned as  
2 undeliverable with no forwarding address. The email listed on GW Sg.’s proof of  
3 claim, with domain moon-mist.ru, remain unanswered. Perkins is also unable to  
4 reach GW Sg.

5 8. Andrey Kuzenny (“Kuzenny”) is a citizen of Russia. He was born in  
6 Kazakhstan during the Soviet Union. He signed the petition commencing this case  
7 on behalf of Giga Watt as its “Secretary.” He has invoked his privilege against  
8 self-incrimination under the Fifth Amendment to the United States Constitution.

9 9. As set forth more fully below, Kuzenny operating through GW Sg.  
10 withdrew funds prematurely from the Perkins IOLTA Trust Account. He has also  
11 admitted to embezzling funds from the accounts of WTT token holders.

12 10. After signing Giga Watt’s voluntary petition for relief commencing  
13 this case, Kuzenny or entities controlled by him, including Cryptonomos Pte. Ltd.  
14 (“Cryptonomos”) and/or GW Sg., collected revenues generated by Giga Watt’s  
15 post-petition operations and did not disclose these revenues. He also made post-  
16 distributions to WTT Token holders from the post-petition revenues, including to  
17 Jun Dam, John Winslow, and Scott Glasscock, who served on the Official  
18 Committee of Unsecured Creditors (“Committee”). Post-petition operations  
19 generated more than \$100,000 in administrative expenses, including rent and  
20 electricity, which the Trustee has since paid.

21 11. Kuzenny also told this Court that if the Court appointed a trustee,  
22 then “the Russian team” would not cooperate with the Trustee and Giga Watt

24 FIRST AMENDED COMPLAINT – Page 4

1 would be destroyed. The Trustee was appointed and the Russian team has not only  
2 refused to cooperate, but has obstructed the Trustee's investigation. For example,  
3 in a tactic similar to one used by Elizabeth Theranos in her criminal fraud trial,  
4 Kuzenny provided the Trustee partial access to what seemed to be Giga Watt's  
5 electronic books and records. Then he filed a declaration with the Court falsely  
6 testifying that he had provided full access to the Debtor's electronic books and  
7 records and falsely alleging that the Trustee had either stolen funds or negligently  
8 allowed the funds to be stolen.

9       12. Kuzenny also wrested control of Giga Watt's revenues for his own  
10 benefit and that of the "Russian team" while saddling Giga Watt with crippling  
11 liabilities which rendered it insolvent.

12       13. Timur Usmanov ("Usmanov") is a Russian national who resides in  
13 Los Angeles, California. He is hoping to obtain a green card which would grant  
14 him permanent residency. He took nights classes in economics in Kazakhstan,  
15 which is a hydrocarbon kleptocracy. Despite his lack of substantive qualifications,  
16 Kuzenny installed Usmanov as the Chief Financial Officer ("CFO") of Giga Watt.  
17 Usmanov served as the CFO from approximately May 1, 2017 until September  
18 2018.

19       14. Usmanov enforced Kuzenny's will. He wrested control of Giga  
20 Watt's revenue stream from Carlson and turned it over to Kuzenny and the  
21 Russian team. From May to November 2017, Kuzenny paid Usmanov's salary in a  
22 series of cash payments and wire transfers from Cryptonomos. The wire transfers

24 FIRST AMENDED COMPLAINT – Page 5

1       went to Usmanov's bank in Latvia. Neither Kuzenny nor Cryptonomos provided  
2       Usmanov with a W-2, 1099 or other form so that he could report this income and  
3       he did not report this income to the IRS.

4       15.      The Giga Watt Project was an unregistered securities offering which  
5       raised \$50 million by soliciting investment in Giga Watt through the sale of WTT  
6       Tokens and miners. Miners are computers that engage in cryptocurrency mining  
7       by running a hash function to verify transactions recorded on the applicable  
8       blockchain.

9       16.      According to the Giga Watt Token Launch White Paper ("White  
10      Paper"), attached hereto as **Exhibit A**, which governed the terms of the GW ICO,  
11      Cryptonomos (described below) would collect the WTT Token sales proceeds for  
12      Giga Watt and place them in escrow ("Escrow") pending completion of Giga  
13      Watt's facilities. Giga Watt's "Partner," GW Sg. would sell the miners. The White  
14      Paper stated:

15       The Giga Watt Project is built in partnership between Giga Watt, Inc.  
16       a U.S. company ("GigaWatt" or "Company"), which offers mining  
17       hosting service sat its Wenatchee, WA facilities, and GigaWattPte.  
18       Ltd., a Singapore company ("Partner"), which sells mining  
19       equipment to customers worldwide.

20      **Exhibit A** at 5.

21       17.      The Russian team controlled all aspects of the GW ICO, down to the  
22       logo. Another Russian, Daria Generalova, working with Grant and Perkins,  
23       drafted the White Paper.

24       FIRST AMENDED COMPLAINT – Page 6

18. The Russian team trampled over the GW ICO terms. GW Sg. took control of the WTT Token sales proceeds, although the White Paper provided that GW Sg. would sell miners in partnership with Giga Watt, which was selling the WTT Tokens. Later, Cryptonomos took control of Giga Watt's revenues, although the White Paper provided that Cryptonomos was only providing marketing and logistical support for Giga Watt's public offering.

## NON-PARTY ACTORS

19. Nikolay Evdokimov (“Evdokimov”) is a Russian national. He signed the agreement by which Giga Watt purchased the assets of David Carlson’s company, MegaBigPower, as described more fully below. Evdokimov left the Giga Watt Project before the GW ICO ended. After leaving the Giga Watt Project, he ran another unregistered cryptocurrency securities offering for which the United States Securities and Exchange Commission (“SEC”) sued him. The SEC obtained a default judgment against him and his company, ICOBox, Inc. for failing to register this coin offering and for failing to register as a broker dealer. The default judgment required ICOBox and Evdokimov to pay \$16,059,429.99 as “ill-gotten gains” and pre-judgment interest. It also imposed a civil penalty against Evdokimov in the sum of \$192,768. *See ICOBox, Inc. SEC v. ICOBOX*, Case No. 2:19-cv-8066 DSF-E, U.S. District Court, Central District of California, filed March 5, 2020, ECF No. 17.

20. Upon information and belief, Cryptonomos was incorporated under the laws of Singapore in December 2017. Kuzenny, Leonid Markin, and Eduard

FIRST AMENDED COMPLAINT – Page 7

1      Khaptakhaev conducted business through Cryptonomos. Mail sent to the address  
2      listed on Cryptonomos' proof of claim has been returned as undeliverable with no  
3      forwarding address. Perkins is also unable to reach Cryptonomos. According to  
4      the White Paper, Cryptonomos served as a kind of investment banker to the GW  
5      ICO. It provided marketing and logistical support, including collecting the WTT  
6      Token sales proceeds on Giga Watt's behalf, depositing them into the Escrow, and  
7      releasing WTT Tokens and Escrow funds in step with construction.

8            21.     Katrina Grant, a/k/a Katrina Arden, and Katrina Kovalyeva ("Grant")  
9      provided legal advice to Cryptonomos, GW Sg., and Giga Watt. She also advised  
10     Evdokimov on the corrupt ICOBox ICO. Upon information and belief, she has  
11     dual Russian and U.S. citizenship. Although she did not attend law school, she is a  
12     member of the California State Bar. She is based in Puerto Rico.

13            22.     David Carlson ("Carlson"), a U.S. citizen, was Giga Watt's CEO  
14      from January 1, 2017 to on or about September 15, 2018. He had no managerial  
15      authority over Giga Watt. He was Giga Watt's Chief Executive Offer ("CEO") in  
16      name only. The Russian team controlled Giga Watt through Usmanov. In 2019,  
17      the Trustee commenced an adversary proceeding against Carlson and related  
18      persons regarding the eve-of-bankruptcy transfer of the one Giga Watt  
19      cryptocurrency facility that was not tokenized and not part of the Giga Watt  
20      Project. The Court approved the Trustee's settlement with Carlson pursuant to an  
21      Order, dated March 10, 2020. ECF No. 508.

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23  
24      FIRST AMENDED COMPLAINT – Page 8  
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1           23. The Russian team carefully scripted Carlson, writing articles, drafting  
2 answers for reporters and interviewers, and reviewing and critiquing his public  
3 comments afterwards. In addition to marketing, Carlson was involved in  
4 constructing the facilities. In this regard he was not successful. He and the Russian  
5 team only managed to build 10.8 megawatts of capacity for WTT Token holders.  
6 However, according to Kuzenny, Giga Watt had sold more than 20 million WTT  
7 Tokens, leaving the GW ICO approximately 50% oversubscribed. Also,  
8 construction fell behind the schedule set forth in the White Paper triggering refund  
9 rights for oversubscribed WTT Token holders.

10          24. At all material times, Circle Internet Finance, Inc. (“Circle”) was a  
11 Virtual Asset Service Provider which, among other things, exchanged U.S. dollars  
12 for cryptocurrency. The Russian team told the SEC that Circle converted  
13 cryptocurrency into U.S. dollars for the GW ICO.

14          25. Circle made the following deposits into Perkins IOLTA trust account:

Date	Amount
7/24/2017	\$2,575,000
8/4/2017	\$5,000,000
8/4/2017	\$6,598,900
Total:	\$14,173,900.00

20          26. Circle does not have in its possession, custody or control any records  
21 showing the origin of the funds that it deposited into the Perkins IOLTA trust  
22 account only days before Kuzenny began withdrawing those funds from that same  
23

24 FIRST AMENDED COMPLAINT – Page 9

account. However, it converted cryptocurrency for GW Sg., Cryptonomos, and another company that Kuzenny controlled named Singtrade.

27. In 2018, Circle purchased and began operating an unregistered securities exchange named Poloniex which dealt in digital assets, including tokens. In 2021, Circle agreed to pay more than \$10 million to settle charges brought by the SEC for operating an unregistered online digital asset exchange and trading platform that facilitated the buying and selling of digital asset securities. The individuals from Circle who worked with Giga Watt are no longer with Circle.

28. Singtrade Pte. Ltd. (“Singtrade”) is a Singapore corporation through which Kuzenny sold miners in the GW ICO, despite the fact that the White Paper stated that GW Sg., as Giga Watt’s “partner,” would sell the miners. Singtrade’s corporate filings disclose that its business purpose is “palmistry” and “astrology.” Kuzenny provided these papers to Circle in a mockery of due diligence.

## **PRELIMINARY STATEMENT**

*“We are not gangsters. We are Russians.”<sup>1</sup>*

29. The GW ICO was an unregistered securities offering to raise money using digital assets and cryptocurrency as the lure. Ness brought Perkins into the center of the GW ICO by permitting Kuzenny to place, layer, and integrate

<sup>1</sup> In U.S. Trial Of Alleged Hacker, Signs Of Larger Russian Cybercrimes (rferl.org), <https://www.rferl.org/a/methbot-russia-internet-fraud-state-sponsored-hacking-zhukov/31241417.html>. Last accessed: September 8, 2022.

FIRST AMENDED COMPLAINT – Page 10

1 approximately \$22 million – ostensibly derived from the GW ICO – through  
2 Perkins IOLTA trust account.

3       30. When Ness' partners realized what he had done, i.e., when Perkins  
4 began receiving small cash deposits in hundreds of transactions, some without any  
5 identification, he tried to quit. But the Russian team threatened him by stressing  
6 that Perkins was absolutely critical to the success of the GW ICO and that they  
7 had already told the public that Perkins was part of the team.

8       31. Kuzenny referred to the group of Russians who ran Giga Watt Project  
9 as “the Russian team.” The Russian team routinely made fun of the Americans.  
10 One member of the Russian team masqueraded as a Russian Batman, calling  
11 himself Adam West. Another Russian called himself Al Mafia, writing to Perkins  
12 under this moniker. Usmanov, Giga Watt’s Russian CFO, called his American  
13 colleagues “stupid” and fantasized about firing them so that they could lose their  
14 healthcare. For its part, Singtrade, which sold miners, listed its corporate business  
15 as “astrology and palmistry.”

16       32. The Russians, with Carlson’s assistance, also abused the public  
17 municipalities that supported the Giga Watt Project. The Russian team left a large  
18 hole on land belonging to the Chelan Douglas Regional Port Authority (“Port”)  
19 which is adjacent to the land that Giga Watt had leased from the Port, costing the  
20 Port more than \$100,000 to fill. Giga Watt referred to the land leased from the  
21 Port as the Pangborn Site as it was next to the Pangborn Airport in East  
22 Wenatchee, Washington.

23  
24 FIRST AMENDED COMPLAINT – Page 11  
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1       33. Further, the Port was not simply Giga Watt’s landlord. It had  
2 promoted the Giga Watt Project to the public. The Port also took out a loan in  
3 reliance on the Giga Watt Project and to help the Giga Watt Project, which the  
4 Port has had to repay out of its own funds. The Executive Director of the Port  
5 resigned after this bankruptcy case commenced.

6       34. The Douglas County Public Utility District No. 1 (“District” or  
7 “PUD”) may have fared worse. Like the Port, the District gave Giga Watt  
8 significant concessions, including allowing Giga Watt to build its own electrical  
9 substation on the Pangborn Site. The Russian team and Carlson also induced the  
10 District to spend \$365,000 building poles and transmission wires which ultimately  
11 led to nowhere. The Pangborn Site was eventually reduced to a Potemkin Village  
12 on which stood powerless pods.

13       35. After commencing this bankruptcy case, Kuzenny accused the  
14 District of “reiderstvo,” which is a Russian form of corruption in which a  
15 government entity or municipality, like the District, raids and takes over a  
16 legitimate private business. The Committee then obtained an order requiring the  
17 Trustee to hire counsel to evaluate these accusations and provide a “second  
18 opinion” regarding Kuzenny’s allegations. The District incurred more than  
19 \$30,000 in attorney’s fees producing tens of thousands of documents to the  
20 estate’s special counsel regarding Kuzenny’s untrue allegations.

21       36. The Russian team has consistently shown no appreciation for or  
22 understanding of the Rule of Law. For example, Kuzenny caused Giga Watt to

24 FIRST AMENDED COMPLAINT – Page 12

1 object to the appointment of a trustee. In that objection, he threatened to destroy  
2 Giga Watt's business, bluntly stating that the "Russian team" would not cooperate  
3 with any trustee and that such cooperation was essential to Giga Watt's health.

4 37. In another example, Usmanov "assured" the payroll department at  
5 Giga Watt that Kuzenny's appointment as Chief Operating Office was simply a  
6 ruse designed for the American authorities so that Kuzenny could obtain a work  
7 visa as an exceptional individual. Usmanov assured them that Kuzenny would not  
8 actually do anything at Giga Watt. However, he would expect to be paid his  
9 \$180,000 annual salary.

10 38. The Russian team also encouraged Giga Watt investors to buy WTT  
11 Tokens and miners with cryptocurrency that could be purchased on an exchange  
12 known as BTC-e. However, at the time, BTC-e's operator, Russian national,  
13 Alexander Vinnick, was under indictment for money laundering and fraud. Mr.  
14 Vinnick was extradited to the United States from Greece in August 2022.

15 39. By some measures, the Giga Watt Project was big. According to Giga  
16 Watt's controller, Heather Mulhall, \$30 million was spent on construction.  
17 Further, Giga Watt built 10.8 megawatts of cryptocurrency facilities in Moses  
18 Lake, Washington. However, it is not unusual for Russian fraudsters to invest  
19 heavily in their projects. A Russian was behind what one cybercrime researcher  
20 called "the most costly botnet fraud in history." In U.S. Trial Of Alleged Hacker,  
21 Signs Of Larger Russian Cybercrimes ([rferl.org](http://rferl.org)). Nor is it unusual for Russian  
22 fraudsters to blend illegitimate activities with a legitimate business. "Russians also

23  
24 FIRST AMENDED COMPLAINT – Page 13  
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1 commit other sophisticated types of fraud that blend legal and illegal operations,  
2 as often happened in the former Soviet Union. This blend maximizes the impact of  
3 the illegal activity and makes it hard to detect.”<sup>2</sup>

4       40. Perkins helped the Giga Watt Project in a variety of ways. According  
5 to Carlson, it offered what the Department of Justice calls jurisdictional arbitrage,  
6 advising the Russian team to collect the WTT Token and miner sales proceeds  
7 through an offshore company. Jurisdictional arbitrage makes it more difficult to  
8 issue service of process and conduct investigations. Perkins also advised regarding  
9 the U.S. securities laws and reviewed the White Paper. It lent credibility to the  
10 GW ICO by serving as a credit enhancement mechanism. Perkins even opened its  
11 IOLTA trust account to Russians who were running an unregistered securities  
12 offering. And it granted them free access to these funds contrary to the terms of  
13 the White Paper.

14       41. Perkins claims that Giga Watt is a mere stranger. Giga Who?  
15 However, on the very day that Perkins released \$5.4 million of the GW ICO  
16 proceeds to GW Sg., Perkins told the United States Security Service (“USSS”),

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17  
18       <sup>2</sup> Finckenauer and Waring, *Challenging the Russian Mafia Myth*, U.S. Department  
19 of Justice website, <https://www.google.com/url?client=internal-element-cse&cx=015849196504226064512:uyit-fm6gna&q=https://www.ojp.gov/pdffiles1/jr000247b.pdf&sa=U&ved=2ahUKEwj1dSSoPf5AhU0FjQIHSVmAqIQFnoECAAQ&usg=AOvVaw3g1F65lEPAdoC>. Last accessed on September 5, 2022.

1     “We represent Giga Watt.” Indeed, Usmanov believed that Ness was Giga Watt’s  
2 point person “on all legal matters.” Furthermore, anyone reading the White Paper,  
3 especially the attorneys responsible for its “final review,” understood that the GW  
4 ICO solicited investments in Giga Watt.

5       42. Ness appears to share the Russians’ penchant for obfuscation.  
6 Although the engagement letter with GW Sg. states that Perkins would provide  
7 general corporate advice to GW Sg., Perkins did not provide any such advice to  
8 GW Sg. And, although Perkins had no engagement letter with Giga Watt, it  
9 provided general corporate advice to Giga Watt.

10      43. Usmanov enforced the Russian team’s will. He forced Carlson to turn  
11 over to the Russian team the keys to the wallets which collected and accounted for  
12 Giga Watt’s cryptocurrency revenues. By having Carlson turn over the keys, the  
13 Russian team effected an off-chain transaction, which involves the transfer of  
14 private keys from one person to another without recording the transaction on the  
15 blockchain. It maintains opacity.

16       44. Creditors and interest holders have filed more than \$100 million in  
17 claims in the bankruptcy case. WTT Token holders and miners have asserted  
18 approximately \$70 million in claims, of which \$30 million is asserted by the class  
19 of WTT Token holders and miners in a class action pending in the U.S. District  
20 Court, for the Eastern District of Washington, seeking rescission and restitution  
21 under section 12 of the U.S. Securities Act of 1993. Regarding insider claims,  
22 Cryptonomos has filed a claim for approximately \$2.8 million, GW Sg. has

24 FIRST AMENDED COMPLAINT – Page 15

1 asserted a claim for approximately \$27 million, and Kuzenny, through Singtrade,  
2 has asserted a claim for approximately \$2 million. Non-insider general unsecured  
3 claims are approximately \$4.5 million.

4 **GENERAL ALLEGATIONS<sup>3</sup>**

5 45. In 2016, Carlson, Rob Taves (“Taves”), and Jeffrey Field (“Field”)  
6 operated a cryptocurrency mining facility through their entity, Enterprise Focus,  
7 Inc., doing business as MegaBigPower. According to the White Paper,  
8 MegaBigPower re-branded itself as Giga Watt by selling all or substantially all its  
9 assets to Giga Watt pursuant to a *Bill of Sale and Assignment and Assumption*  
10 *Agreement* (“Sale Agreement”), dated January 1, 2017. The purchase price was \$3  
11 million payable in installments: (1) January 15, 2017, \$21,000; (2) February 15,  
12 2017, \$21,000; (3) March 15, 2017, \$958,000; (4) September 15, 2017,  
13 \$1,000,000; and (5) March 15, 2018, \$1 million.

14 46. On March 2, 2017, Ness wrote to Grant that for a fixed fee of  
15 \$10,000 per month from March 1, 2017 through February 28, 2018, Perkins would  
16 provide “day-to-day support, including counseling on securities regulations,  
17 corporate structure, tax laws ***as well as final document review with respect to***  
18 ***digital currency style token sales***” to Cryptonomos. (Emphasis added.)

19 47. That same day, March 2, 2017, Carlson signed the power contract  
20 (“Pangborn Power Contract”) with the District. On March 7, 2017, the District  
21 \_\_\_\_\_

22 <sup>3</sup> This pleading contains multiple excerpts of emails. This pleading does not  
23 correct typographical errors contained in these excerpts. However, it attempts to  
clarify where necessary.

1 signed the Pangborn Power Contract. The District would provide up to 30 MW of  
2 “maximum connected Load” to the Pangborn Site. The price for electricity was  
3 the rate set forth in Rate Schedule 1 plus 6.013% of the monthly bill. At the time  
4 Rate Schedule 1 provided for a price of 2.8 cents per kw/h. However, this rate was  
5 subject to change at any time.

6 48. On March 9, 2017, Carlson wrote to Taves and Field:

7 Guys, we've had some delays getting the token launched, mainly due  
8 to the legal process required to allow us to sell our tokens to non  
9 accredited investors in the US and Europe. In order to avoid the Great  
Eye of SECron, we have to productize the offer, and this has taken  
time. Buyer proposes to delay payments[.]

10 Carlson is equating the SEC to the Great Eye of Sauron, the embodiment of evil in  
11 The Lord of the Rings.

12 49. That same day, March 9, 2017, Carlson signed the lease with the Port  
13 for the Pangborn Site. The Port granted Giga Watt a concession providing Giga  
14 Watt's rent would be deferred for six months, during the deferment period would  
15 have to pay \$923.75 a month in rent for the first six months of the lease which  
16 began on March 1, 2017. Thus, it would not have to pay rent until September  
17 2017. After September 2017, Giga Watt would pay \$15,312.33. Starting in March  
18 2018, rent would be \$8,239.81 per month.

19 50. On March 11, 2017, Evdokimov signed the Perkins-Cryptonomos  
20 engagement letter described in paragraph 46 hereof.

21 51. On March 13, 2017, Carlson followed up with Taves and Field:

22 We've signed a deal with the PUD for 30MW, and another deal with  
23 the Port for 8 acres to build the pod farm. Investor feedback on the

24 FIRST AMENDED COMPLAINT – Page 17

1        token is very positive, *but continue to wait for Perkins Coie* to finish  
2        their opinion letter so that we can launch the PR campaign

3        (Emphasis added.) Carlson was exaggerating. Perkins was not retained to issue an  
4        opinion letter, but instead to be available for day-to-day support, advice, and final  
5        document review of any white papers, including the White Paper.

6        52. In March, 2017, Leonid Markin, a Russian national who is a member  
7        of the Russian team, acting on behalf of Giga Watt, and Carlson, Taves and Field,  
8        on behalf of MegaBigPower, signed a modification (“Modification”) to the Sale  
9        Agreement pursuant to which Giga Watt would pay MegaBigPower \$3 million in  
10      three installments: (1) \$1 million when the first \$1 million was withdrawn from  
11      the GW ICO escrow; (2) \$1 million six months after the first payment; and (3) \$1  
12      million twelve months after the first payment.

13        53. Giga Watt never paid Carlson any portion of this purchase price and  
14      indeed never had the funds to do so. Instead, the Russian team controlled the WTT  
15      Token sales proceeds through the Escrow and took all of Giga Watt’s operating  
16      revenues. GW Sg. paid \$2 million to David Carlson in cryptocurrency leaving a  
17      total unpaid of \$1 million.

18        54. The White Paper, which set forth the terms of the GW ICO, provided  
19      for the Escrow:

20        All funds collected through the pre-sale and Token Launch will be  
21      deposited in escrow. Original payments made in BTC and ETH will  
22      be converted to USD at the rate effective at the time when the rights  
23      to WTT Tokens were reserved. The funds will be released from  
24      escrow in step with the completion of facilities.

25        **Exhibit A** at 18.

26        FIRST AMENDED COMPLAINT – Page 18

If the token sale is over-subscribed, meaning that there is more demand for WTT tokens than there is existing facility capacity, the capacity will be allocated to the WTT tokens in the order in which the WTT tokens were purchased. The over-subscribed proceeds will be placed into escrow until the requisite processing center capacity has been built out. [footnote 21]

Fn. 21: If the construction of the processing center capacity designed to accommodate additional WTT tokens is not completed in a reasonable amount of time, the relevant portion of these proceeds will be refunded to the WTT token purchasers. However, if Giga Watt [has] discharged all its obligations in full, no refunds will be due to the WTT token purchasers.

**Exhibit A** at 19.

Construction timeline specified in this White Paper is based on the reasonable estimates but is not guaranteed. This timeline may change, and the construction may be delayed because of many factors, including those beyond Giga Watt's control, such as the actions of third-parties (contractors, suppliers, etc.). If the completion of the capacities is delayed by more than 3 months from the projected date, and, consequently, the relevant WTT tokens are not issued, the escrow agent may issue a refund at the request of the WTT token purchasers. The refund will be issued in the original form of payment at the exchange rate on the date of the refund.

**Exhibit A** at 26-27.

55. The GW ICO launched on or about May 1, 2017 with a multi-channel marketing campaign. Giga Watt produced to the SEC thousands of pages of marketing materials that appeared on Twitter, Facebook, Reddit, and other media. The Russian team even paid for a billboard on a highway leading to LAX

1       56. from Los Angeles where Usmanov, Evdokimov, Kuzenny and  
2 Markin were based:



13       57. No one had actually bought pizza for 5K bitcoins in 2010. The  
14 Russians were generating buzz about Giga Watt.

15       58. In May 2017, Grant asked Ness if Perkins would agree to be the  
16 escrow for the GW ICO. Perkins agreed. Grant wrote to Ness, “remember, GW  
17 Sg. is issuing the tokens.” However, the White Paper provided that Giga Watt –  
18 not GW Sg. – was selling the WTT Tokens. GW Sg. was only selling the miners.

19       59. On May 12, 2017, Perkins finalized its agreement to hold the Escrow.

20       60. In June 2017, less than a month after the GW ICO began, Ness wrote  
21 to Arden:

22              My escrow guys are asking how long this is going to go on.  
23              Normally, we do closing escrows as an accommodation for clients

24 FIRST AMENDED COMPLAINT – Page 20

1           that take a week or two for a transaction to close and involve 10 or 20  
2           wires to manage. This one has gone way beyond the norm for us. Are  
3           we close to the closing when no more wires will come in? If not, let's  
4           see what other escrow providers can handle this. We are not set up to  
5           manage long term escrow accounts.

6           Arden responded, in pertinent part:

7           We have the date for the end of sales set on July 31, unless we reach  
8           the cap of 30,000,000 sold earlier. This date was indicated on every  
9           single document you reviewed prior to agreeing to provide the  
10          escrow services to Giga Watt. We have publicly announced that  
11          Perkins Coie performs the escrow for the sale of tokens. It is listed on  
12          the web-site, in publications and reports made on WTT by  
13          independent media. ***Switching this service to another company now  
would be detrimental for the entire token launch process and would  
jeopardize not just the future sales but also existing purchases once  
the buyers learn that Perkins Coie no longer escrows their funds.*** I  
14          do understand your concern and I feel sorry that it causes your firm a  
15          great deal of inconvenience; however, due to the extend [sic] of  
16          possible damage, switching the escrow at this point does not seem to  
17          be a solution. Let's figure something out to make the process easier  
18          for you, instead.

19           Ness replied, "Understood. Don't want to cause trouble. Just looking for a way to  
20          explain this novel stuff internally. Let's hope you get to the cap first!"

21           61. Indeed, Cryptonomos carried Perkin's name and Lowell Ness'  
22          photograph on its website with the caption, "Legal Consulting and Escrow.  
23          Internationally acclaimed law firm with vast experience in the field of blockchain  
24          and cryptocurrencies." The website states under Ness' photograph and next to the  
25          picture of a safe:

26           All funds raised through the WTT Token Launch are put in fiat  
27          escrow (funds received in cryptocurrencies are first converted into  
28          USD). Funds are released from escrow in batches ***only after the  
underlying capacities are built*** and relevant tokens are issued and  
29          distributed.

30           (Emphasis added.)

31           FIRST AMENDED COMPLAINT – Page 21

1           62. In July 2017, Arden wrote to Ness:

2           Giga Watt [is] trying to get a loan to build the additional facilities  
3           secured by the funds in the escrow so it can build more and ahead of  
4           construction schedule. The lender wants to make sure that he would  
5           get paid from the escrow. If we ask PC to keep certain balance (we  
6           are talking about \$3,000,000) and make payment at Giga's request to  
7           a specific third party, you should be able to do so, right? The loan  
8           would be for three months but Giga is planning to repay it in one  
9           month.

10          Ness responded:

11          I'm getting a ton of push back internally for "***abusing***" ***our closing escrow***. They definitely aren't going to let me do something really  
12          unusual like paying a third party. I know we set this up at the last  
13          minute, but we're just using our standard client closing account that  
14          normally gets 10 or 11 wires into it and pays out to our client a week  
15          or two later.

16          (Emphasis added.)

17          63. On July 25, 2017, the SEC issued its Report of Investigation Pursuant  
18          to Section 21(a) of the Securities Exchange Act of 1934: The DAO explaining its  
19          analysis that blockchain digital asset tokens were securities subject to the U.S.  
20          securities laws. Therefore, at least as of this date, Perkins was on notice that WTT  
21          Tokens were likely securities.

22          64. In the summer and early fall of 2017, when Usmanov was pressuring  
23          Carlson to hand over the keys to Giga Watt's wallets, Carlson approached Perkins  
24          for advice, asking among other things how the revenue stream should be handled  
25          both internally and for tax purposes. He met with Martha Sandoval ("Sandoval"),  
26          a Perkins corporate attorney on July 27, 2017. Before, during, and after this  
27          meeting, Usmanov, Kuzenny, and Leonid Markin pressured Carlson to back  
28

29          FIRST AMENDED COMPLAINT – Page 22

1 down. They told him to accept Usmanov's authority, "change his attitude," and  
2 turn over the keys to the wallet(s). Meanwhile, Sandoval advised Giga Watt that  
3 its corporate documents were in disarray and she prepared a list of action items for  
4 the client, Giga Watt, which Usmanov ignored.

5 65. On August 1, 2017, GW Sg. deposited \$1.95 million into the Escrow.  
6 This deposit contradicted the White Paper which stated that Cryptonomos – not  
7 GW Sg. – would collect the WTT Token sales proceeds and place them in the  
8 Escrow.

9 66. On August 7, 2017, Mikhaylyuta asked Perkins to release \$5.4  
10 million from the Escrow, writing, "Now that we've launched the first batch of  
11 tokens I would like to ask you to release the equivalent amount of USD 5 400  
12 000." No new construction had been completed.

13 67. That same day, August 7, 2017, Sandoval wrote to Michael  
14 Olmstead, Giga Watt's sole in-house accountant, that Perkins had not worked on  
15 Giga Watt's incorporation and that she was not familiar with Giga Watt. That  
16 same day, she also wrote to Carlson:

17 It was a pleasure meeting the two of you the week before last. I  
18 followed up with my colleagues who have worked on Giga Watt /  
19 Cryptonomos matters prior to my involvement and can confirm that  
20 we were not involved in the incorporation of Giga Watt, Inc. or  
[GigaWatt] Pte. Ltd nor in organizational structure  
conversations/decisions. As I mentioned in our meeting, our  
involvement began with questions regarding separation of liability  
between the entities.

21 Sandoval is referring to Perkins' non-involvement in incorporating Giga Watt and  
22 GW Sg. It went without saying that Perkins' involvement with the GW ICO  
23

24 FIRST AMENDED COMPLAINT – Page 23

1 started at least in March 2017 when Carlson wrote to his MegaBigPower  
2 shareholders that he and the Russian controlling shareholders of Giga Watt were  
3 waiting on Perkins to launch the GW ICO and Perkins signed the retainer letter  
4 with Cryptonomos in early March.

5 68. The same day, August 7, 2017, Usmanov sent an email to Ness with  
6 the subject line, “need your advice.” The body of the email stated:

7 Hi Lowell [Ness], My name is Tim, I'm the CFO at Giga Watt, Inc.  
8 **Katrina referred to you as a main contact person who I could speak**  
**with on all our legal matters.** Several days ago we received an email  
9 supposedly sent by the U.S. Secret Service, asking us to share some  
sensitive information. Please find below a copy of this email.

10 (Emphasis added.) Ness promptly directed Usmanov to Jean-Jacques Cabou  
11 (“Cabou”), Ness’ partner, who responded:

12 I share your skepticism but it also bears some indicia of legitimacy to  
13 me. I’d be happy to return the call if you’d like; otherwise there’s no  
harm in returning the call and saying you are trying to confirm the  
14 legitimacy of the request before consulting with counsel about  
providing any information. Don’t give anything up yet; see what the  
guy says

15 69. Usmanov responded:

16 Agree with you. Would be great if you gave them a call on our  
17 behalf. Your voice will sound more persuasive. At least you will find  
the right questions to ask.

24 FIRST AMENDED COMPLAINT – Page 24

1           70. On August 8, 2017, Perkins made the first premature escrow release.  
2 That same day, August 8, 2017, at 8:19 a.m., Ronan McGee of the USSS wrote to  
3 Ness:

4           Good morning Lowell,

5           The U.S. Secret Service has an ongoing investigation in which a  
6 suspect's phone received a confirmation code from Cryptonomos.  
7 We believe the confirmation code to be related to the mining  
operations of the Cryptonomos / Giga Watt venture. We are  
interested in obtaining any and all information Cryptonomos / Giga  
Watt maintains on file for this specific phone number, particularly  
any bitcoin addresses.

9           We have attempted to contacted Cryptonomos directly multiple  
10 times, but they have thus far failed to respond to our inquiries. Our  
understanding is that you are the legal representative of Giga Watt.

11          As a result, could you please provide the appropriate Grand Jury  
12 subpoena contact information (e.g. physical address to include on the  
subpoena, email to which subpoena can be served, etc) for  
13 Cryptonomos / Giga Watt so that we may subpoena the information  
in question?

14          71. Less than an hour later, on August 8, 2017, Cabou responded:

15          Ronan and Team,

16          It was a pleasure to speak with Ronan briefly just now regarding this  
17 email that was directed to my partner, Lowell Ness, who is also  
copied here. As I explained to Ronan, **our firm represents Giga**  
**Watt** and I can accept service of a subpoena by email on its behalf.  
18 Please just send that to me.

19          We understand that the USSS and state authorities have reason to  
20 believe Giga Watt may hold certain records relevant to your  
investigation. Once we get the subpoena, we will work with the client  
21 to determine what if any responsive records we have and to produce  
them to you in a timely and convenient way.

22          Please let me know if you have any questions.

24 FIRST AMENDED COMPLAINT – Page 25

1           We look forward to working with you.

2       72. Cabou forwarded the email to Ness and Usmanov adding the  
3 following:

4           Lowell and Tim,

5       I spoke just now with Ronan McGee, an intelligence analyst for the  
6 USSS. He confirmed this was a legit request and will be sending a  
7 subpoena from the US District Court in Kentucky for the records they  
want. I have asked that the subpoena be directed to me, as you can  
see below. McGee confirmed that GW is just a holder of information  
here, not a target or subject of the investigation.

8       So the play here is for us to be cooperative as long as possible, see  
9 what they want, and then get it to them if we have it. One thing I'd  
like to do is to review whatever agreement(s) or terms we would have  
10 with the individual in question to ensure that we have no self-  
imposed obligation to notify them of the subpoena.

11      Obviously I'd be happy to talk about any of this at your convenience.

12       73. Thus, on the day that Perkins made the first premature escrow  
13 release, Perkins represented Giga Watt "on all legal matters," told the USSS that  
14 Perkins represented Giga Watt, and advised Giga Watt on how to respond to the  
15 subpoena.

16       74. On August 9, 2017, the day after Perkins made the first premature  
17 escrow release to GW Sg., "Al Mafia" wrote to Perkins' accounting department  
18 asking for the "general ledger regarding the GigaWatt Pte. Ltd. escrow." That  
19 same day, August 9, 2017, Kuzenny wrote to Al Mafia, "Our lawyers are in a  
20 panic at your letter that you addressed. Honestly. You know how they relate to the  
21 word mafia here in America (( [.] Let me better send you dox from them.)"  
22 Kuzenny was trying to get "Al Mafia" to invest in Giga Watt and Usmanov was

24 FIRST AMENDED COMPLAINT – Page 26

1 working on Giga Watt's financial statements for Al Mafia. Thus, when Kuzenny  
2 wrote that "*our* lawyers" were in a "panic," he was referring to Giga Watt's  
3 lawyers, Perkins.

4 75. On August 9, 2017, Carlson wrote to Sandoval regarding the "project  
5 orientation checkup," which was code for whether Giga Watt could fend off the  
6 Russian team's efforts to grab Giga Watt's revenues. He copied Khaptakhaev,  
7 Markin, Kuzenny, and Usmanov:

8 Thanks for the clarity[,] Martha.

9 Ed - we met with Perkins week before last and did a project  
10 orientation checkup with Martha. I wasn't clear what Perkins had  
been involved with versus the guidance given by Katrina.

11 Its clear that at this point that the corp[.] structure (Giga.sg and  
12 Giga.us) and their relationship were defined by Katrina with perhaps  
some input by Perkins, but not at their specific direction.

13 I think we need to determine if we are comfortable with our current  
14 arrangement, or do we want Perkins to dig into how we are doing  
business and what the entity structure consists of. Further, we may  
15 need Perkins to evaluate whether the legal protection and tax/revenue  
strategies implied by this corp structure are effective and achieve our  
16 goals.

17 We've built a lot of business based on the structure Katrina defined,  
18 and perhaps you guys are familiar and comfortable with it - I'm  
asking you for your feedback on whether to engage Perkins to audit  
our structure and build us a robust plan going forward. At this point I  
19 think its fair to say that Perkins knows \*very little\* about our  
business, with the exception of the two entities and a proposed third  
entity (Hosting).

20 Your thoughts? Thanks! Dave

24 FIRST AMENDED COMPLAINT – Page 27

76. On August 9, 2017, Usmanov wrote to Sandoval:

I totally agree with Dave. We would need to ask Perkins Coie to audit our structure and provide advice and assistance.

Martha didn't mention GW One LLC as a company that is also under our umbrella. Apparently, we would have to set up a call and talk through the entire group and bring Martha up to speed on our M&A plans. We definitely need a legal advice on the upcoming merger with Hashplex as there are few things I'm not clear about.

As for the constitutional dox requested by Martha - please find attached some of the documents on Giga Watt, Inc that I've got as of today. As you can see the Articles of Incorp doesn't contain articles per se, but only a title page. In view of the above, I suggest that Perkins Coie also reach out to Washington Secretary of State to check with them whether or not the initial filing was complete. Same goes for our Singapore entities. Someone would probably need to request the full batch of documents via the registered agent. As far as SHA [Shareholder Agreement] is concerned - I believe this is still being drafted and discussed amongst the shareholders.

77. On or about August 11, 2017, OSBC asked Kuzenny to explain the \$1.95 million transfer from GW Sg.’s account at OSBC to Perkins’ IOLTA Trust Account that GW Sg. had made earlier on August 1, 2017. It also asked Kuzenny to explain the \$5.4 million deposit into GW Sg.’s account from Perkins’ IOLTA Trust Account one week later on August 8, 2017. Kuzenny responded by dissembling, with Usmanov’s help. He and Usmanov said that the \$1.95 million transfer was an “inter-company transfer” and that the \$5.4 million transfer was for “completed construction.” In fact, no new construction had been completed. They also said that the funds were for a “pre-sale,” although this was unsubstantiated and irrelevant.

FIRST AMENDED COMPLAINT – Page 28

1       78. On August 14, 2017, Usmanov followed up with Cabou regarding the  
2 grand jury subpoena. He included a message that the USSS had sent to  
3 Evdokimov previously on August 7, 2017. Usmanov asked him:

4       Could you provide some more information of what you are  
5 discussing with them? Would you also share that subpoena with us,  
6 please? Any steps from our end required?

7       79. Cabou responded:

8       Tim, Thanks for your note. To be clear, I have an open line of  
9 communication with the USSS but I have NOT shared or discussed  
any substance at all with them. I have simply said we want to assist  
and will accept service of a subpoena to me by email.

10      They have confirmed they are still obtaining the subpoena and will be  
11 in further touch.

12      Nothing to do for now at all. Best J

13       80. On August 15, 2017, Mikhaylyuta asked to withdraw \$900,000 from  
14 the Escrow, “We ve [sic] released the second batch of tokens I would like to ask  
15 you to release the equivalent amount of USD 900 000 nine hundred thousand in  
favor of GIGAWATT PTE LTD.” [Punctuation from original not corrected.]

16       81. On August 17, 2017, Cabou forwarded the grand jury subpoena to  
17 Usmanov with Ness in copy, “Attached is the subpoena I just received. We need  
18 to have a call to discuss next steps. When can you and/or your team have that call  
19 with me.”

20       82. Usmanov responded, “I’m ready to talk whenever you are.” Shortly  
21 thereafter, Cabou wrote to Usmanov with a copy to Ness:

22       Tim, Good to speak with you just now. As we discussed, you and  
23 your team will conduct a diligent search for all records responsive to

24 FIRST AMENDED COMPLAINT – Page 29

1           the subpoena and will get any such records to me for review. Once  
2           that's done, we will work with you to complete the waiver and  
3           declaration forms and we will get those to the USSS for you.

4           Look forward to hearing from you[.]

5           83. On August 18, 2017, Usmanov described the steps that the Romanian  
6           suspect had taken on Cryptonomos' website.

7           84. On August 19, 2017, Perkins released \$900,000 to GW Sg. No  
8           construction had been completed. On August 22, 2017, Usmanov wrote to Cabou  
9           again, "Hi J, Here is the name that this guy used when creating a profile on the  
10          website. Popescu Bogdan Stefan[.]"

11          85. On August 22, 2017, Sandoval wrote to Usmanov that Giga Watt  
12          lacked signed bylaws and that she needed more information regarding "the  
13          Singapore entity." Usmanov responded, "I'll try to find that out later on [re the  
14          Singapore entity]. Meanwhile, *let's focus on our U.S. entities.*" (Emphasis  
15          added.)

16          86. Over the next few days, Cabou nagged, cajoled, and guided Usmanov  
17          and Giga Watt's Chief Operating Officer, Anton Orlov (who, like Usmanov  
18          received his salary from the Russian team), through the steps necessary to comply  
19          with the USSS subpoena. For example, on September 4, 2017, Cabou wrote to  
20          Usmanov and Orlov with a copy to Ness:

21           Guys,

22           This is urgent and frustrating. I have gotten no response to the below.

23           Our deadline to provide documents is September 7. I MUST,  
24           WITHOUT EXCEPTION, have all documents to be produced by

25           FIRST AMENDED COMPLAINT – Page 30

1                   tomorrow. So far, I have only one file to produce. That clearly isn't  
2 enough, as explained below.

3                   I also need the waiver and certification attached completed and  
4 returned to me tomorrow. We are under court order here. We cannot  
5 miss this deadline. Please let me know what is happening.

6                   87. On September 5, 2017, Usmanov asked Cabou to confirm that what  
7 he and Orlov had cobbled together "is enough." Cabou responded, "Yes. Thank  
8 you. I will look forward to getting the waiver and certification."

9                   88. On September 5, 2017, Usmanov wrote to Carlson regarding the  
10 USSS subpoena, "You, as the CEO, just need ot [sic] sign the waiver and the  
11 certification." That same day, September 5, 2017, Kirsh wrote to Usmanov with a  
12 copy to Carlson regarding the waiver and certification for the grand jury subpoena  
13 responses, "i filled out the form stuff on pages 5 and 7. Dave, all you need ot [sic]  
14 do isput [sic] down 2 signatures one at the bottom of each page. This needs to be  
15 sent out within 2 days by Perkins." Carlson signed the waiver and certification as  
the CEO of Giga Watt. Neither GW Sg. nor Cryptonomos signed the waiver and  
certification.

16                   89. On September 5, 2017, Michael Olmstead, the sole accountant at  
17 Giga Watt, learned that Giga Watt no longer had control of or even access to Giga  
18 Watt's cryptocurrency revenue wallets. A wall was put between the Giga Watt  
19 accounting team and revenues. Kuzenny through Cryptonomos controlled Giga  
20 Watt's revenues from this point forward. According to Usmanov's emails, Olesia  
21 Egozina, the Chief Product Officer of Cryptonomos, controlled information  
22 regarding the wallet. Although Giga Watt reported approximately \$1 million in

23  
24 FIRST AMENDED COMPLAINT – Page 31  
25

1 revenue in its 2017 federal tax return, that number was provided by Cryptonomos.  
2 Usmanov simply repeated what he had been told and had no means to verify the  
3 number.

4 90. While stripping Giga Watt of its revenues, the Russian Team also  
5 burdened Giga Watt with all the liabilities of the Giga Watt Project, from big  
6 ticket items such as construction costs to various other expenses, such as Uber  
7 rides in Moscow, office space in Beverly Hills, first-class airline tickets between  
8 Los Angeles and Moscow, and costs incurred by Cryptonomos in other ventures,  
9 including a project called Rentberry.

10 91. Throughout its existence, Giga Watt was unable to pay its debts as  
11 they came due and was never balance-sheet solvent.

12 92. On September 12, 2017, Sandoval wrote to Usmanov, in his capacity  
13 as an officer of Giga Watt, pointing out a series of inadequacies in Giga Watt's  
14 incorporation:

- 15 o Bylaws and other Incorporation Steps
- 16 □ You passed along an action by the incorporator dated 12/16/16.

17 In this action, the incorporator:

- 18 • adopted the bylaws;
- 19 • stated that the company would have 1 director; and
- 20 • appointed Nikolay Evdokimov as the sole director •

21 Of these 3 acts taken by the incorporator, the incorporator only has  
22 statutory authority to adopt the bylaws and set the number of  
directors.

24 FIRST AMENDED COMPLAINT – Page 32

1           □ Inconsistent with the 12/16/16 incorporator action, in the 1/1/2017  
2 Minutes of the Special Meeting of the Board of Directors, Adam  
3 West is identified as (and acted as) the sole director.

4           In this meeting, the following officers were appointed:

5           • CEO: David M. Carlson  
6           • President: Nikolay Evdokimov  
7           • CFO: Leonid Markin  
8           • Secretary: Adam West

9           o Steps to be taken are

10           • Client: Provide the identity (identities) of the company's board of  
11           directors  
12           • Client: Provide the identity of the company's officer (are those  
13           listed above correct?; are there other officers?)  
14           • Client: Provide capitalization table (or breakdown of share  
15           ownership)  
16           • Client: Provide input on desired number of authorized shares (post  
17           stock split)  
18           • Perkins: Prepare a shareholder action in which the director(s) are  
19           appointed (and other incorporator actions)  
20           • Perkins: Prepare the organizational actions to be approved by a  
21           company's board of directors  
22           • Perkins: Order governing documents from WA Secretary of State's  
23           Office and amend and restate articles of incorporation

24           93. By "client," Sandoval meant Giga Watt.

25           94. On a similar topic, on September 22, 2017, Kirsh wrote to Carlson,  
26 "you are very right, we have serious problems in gW inc , gw singapore and even  
27  
28

29 FIRST AMENDED COMPLAINT – Page 33

1       in cryptonomos. all these companies need shareholder agreements.” (Punctuation  
2       in original.)

3           95.   Carlson wrote back to Kirsh:

4           Not surprising honestly.

5           In any case I don't see why we can't execute a shareholders  
6       agreement to at least nail it down legally. It's a lot to ask for us to  
7       continue operating as if it is in place, when technically it's never been  
8       executed.

9           We can amend later if needs be...

10          Cheers, and thanks for the copy of the bylaws. I'll get them to the  
11       PUD.

12          There were no signed bylaws and they never nailed down a shareholders  
13       agreement, legally or otherwise.

14          96.   On September 22, 2017, Mikhaylyuta (or Kuzenny using her name)  
15       asked Perkins to release \$1.2 million from the escrow. On September 25, 2017,  
16       Perkins complied. As of September 25, 2017, no new construction had been  
17       finished.

18          97.   On September 26, 2017, Cabou confirmed with respect to the grand  
19       jury subpoena, “This has been taken care of. Please do not contact USSS further.  
20       They will let us know if they have questions.” Again, Cabou was advising Giga  
21       Watt.

22          98.   On October 6, 2017, Usmanov wrote to Sandoval:

23           Sorry for the delay. Our colleagues has been traaveling [sic] a lot  
24       lately, so it was hard to get all together.

25          FIRST AMENDED COMPLAINT – Page 34

1       Regarding GW Management, LLC, Giga Pod 1-100, LLC, and Mine  
2       Building, LLC - actually

3       I've never heard these entities were duly established. Let me ask you  
4       where you heard of them .

5       Anyways, like I mentioned earlier in our previous correspondences,  
6       let's focus first on Giga Watt, Inc. as this is our main operating  
7       vehicle.

8       (Emphasis added.)

9       99. On December 4, 2017, GW Sg. lost its OCBC banking privileges.

10      100. On December 5, 2017, Usmanov wrote to AA1 Solutions, "Most  
11     probably we will have to release some funds from escrow later this week. So we'd  
12     definitely need a USD [U.S. dollar denominated] account to land the money."

13       (Emphasis added.)

14      101. After his misrepresentations to OCBC proved ineffectual and OCBC  
15     terminated GW Sg.'s banking privileges, Kuzenny began directing Perkins to  
16     deliver the escrow releases to Giga Watt. However, Giga Watt was having its own  
17     banking problems. From August 2017 to January 2018, Wells Fargo, Numerica  
18     Credit Union, and Umpqua Bank each informed Giga Watt that it was no longer  
19     welcome. Giga Watt bounced from bank to bank.

20      102. Perkins saw this hopscotch, transferring money to Numerica Credit  
21     Union, then to Umpqua Bank, and then to Bank of America. No questions asked.

22      103. On December 18, 2017, Usmanov drafted what would become the  
23     text of an email request to Perkins, ostensibly from Mikhaylyuta, to release \$2

24     FIRST AMENDED COMPLAINT – Page 35

1 million from the escrow to Giga Watt. On December 19, 2017, Perkins transferred  
2 \$2 million from the escrow to Giga Watt.

3 104. On December 22, 2017, Usmanov ghost wrote another escrow release  
4 request to Perkins, this time requesting that \$4.5 million be sent to Giga Watt.  
5 Perkins transferred this amount to Giga Watt on December 26, 2017.

6 105. In late December 2017, Stormsmedia LLC, a WTT Token and miner  
7 purchaser, sued Giga Watt under section 12 of the U.S. Securities Act of 1933  
8 seeking rescission and restitution of its WTT Token and miner purchases on  
9 behalf of all WTT Token and Miner investors. Stormsmedia alleged that Giga  
10 Watt had not completed construction. Perkins received actual notice of this  
11 complaint.

12 106. In January 2018, Giga Watt settled this lawsuit by paying  
13 Stormsmedia LLC \$953,319.55 out of funds that Perkins transferred to Giga Watt  
14 from the escrow on instructions from Usmanov, Kuzenny, and/or Mikhaylyuta.  
15 The settlement released both Giga Watt and GW Sg. from Stormsmedia only. No  
16 settlement class had been certified.

17 107. In February 2018, Perkins made the last two escrow releases,  
18 notwithstanding actual and inquiry notice that construction was not completed.

19 108. After the Stormsmedia settlement, the lawyer for StormsMedia  
20 approached Perkins on behalf of a group of other token and miner owners asking  
21 that remaining Escrow funds be frozen. There should have been approximately  
22  
23

24 FIRST AMENDED COMPLAINT – Page 36

1 \$10.8 million in the Escrow. He was informed that Perkins was not holding any  
2 funds in Escrow.

3       109. Shortly thereafter, on March 19, 2018, the lawyer filed a securities  
4 action against Giga Watt and GW Sg. under the caption, *Moss v. Giga Watt, Inc.,*  
5 *et al.*, No. 2:18-cv-0010-SMJ (E.D. Wash.). The complaint alleged individual  
6 claims of an unregistered offering of securities under the Securities Act  
7 of 1933 and the Washington Securities Act and a claim for rescission of the token  
8 purchases. In his complaint, Moss alleged:

9       Moreover, contrary to the terms of the GIGA WATT White Paper –  
10 which stated that all invested cryptocurrency would be held in escrow  
11 and would only “be released from escrow in step with the completion  
12 of facilities” – Defendants have represented to Plaintiff that, ***without***  
***regard to GIGA WATT’s failure to have completed its facilities,***  
13 virtually all of the cryptocurrency raised from investors in the ICO  
14 has been liquidated into U.S. Dollars and ***has been transferred from***  
***the escrow account to an operating account;*** and Plaintiff  
15 reasonably believes the funds raised have been dissipated, or will be  
dissipated, before all ICO investors receive their Giga Watt  
tokens/mining equipment or any opportunity to receive a return on  
their investments.

16 Moss Complaint, pp. 32-33, ¶ 105. (Emphasis added.)

17       110. On March 20, 2018, a separately represented token purchaser named  
18 Raymond Balestra filed an action against Giga Watt, GW Sg., Cryptonomos, and  
19 Giga Watt CEO, Carlson, under the caption *Balestra v. Giga Watt, Inc., et al.*, No.  
20 2:18-cv-00103-SMJ (E.D. Wash.). The complaint alleges a claim of unregistered  
21 offering of securities against all defendants under section 12(a)(1) and a control  
22 person claim against Carlson under section 15(a) of the Securities Act of 1933 on

24 FIRST AMENDED COMPLAINT – Page 37

1 behalf of a putative class of plaintiffs who purchased tokens during the GW ICO.  
2 On June 28, 2018, the Court appointed Alex McVicker as lead plaintiff in the  
3 *Balestra* case.

4 111. In his complaint, *Balestra*, *inter alia*, sought a preliminary injunction  
5 enjoining any further disbursement of escrow funds, although by then it was  
6 already empty. *Balestra* Complaint, pp. 21-22. By stipulation of the parties, on  
7 July 3, 2018, the Court consolidated this case with the action titled *Moss v. Giga*  
8 *Watt, Inc., et al.* described above.

9 112. On or about April 2018, the SEC commenced a formal investigation  
10 of the GW ICO. Giga Watt retained Wilson Sonsini Rosati & Goodrich (“Wilson  
11 Sonsini”) to represent it. Zeev Kirsh, who was providing general counsel services  
12 to Cryptonomos, GW Sg. and Giga Watt, advised Carlson and the Russian team to  
13 choose Wilson Sonsini over Perkins.

14 113. In July 2018, Carlson informed Wilson Sonsini that Giga Watt did  
15 not have access to any information regarding the WTT token sale proceeds,  
16 including the Perkins IOLTA trust account. GW Sg. and Cryptonomos had that  
17 information. Thus, Grant and Kuzenny, rather than Carlson or Giga Watt,  
18 produced the information regarding the escrow and token sale proceeds.

19 114. In July 2018, Carlson discovered that Kuzenny was embezzling funds  
20 from the wallets of WTT token holders. When Carlson confronted Kuzenny,  
21 Kuzenny did not deny the embezzlement. Instead, he asked for more time to  
22  
23

24 FIRST AMENDED COMPLAINT – Page 38

1 replenish the funds, pleading, “Please don’t break the balls.” Carlson resigned. His  
2 last paycheck was in September 2018.

3 115. In August 2018, Kuzenny falsely told the SEC through counsel that  
4 all funds had been withdrawn from the GW ICO escrow in step with construction.

5 116. During this period, the SEC asked why the last four escrow payments  
6 had been made to Giga Watt and not to GW Sg., like the first four payments.  
7 Kuzenny stated that it was for administrative convenience in light of urgent  
8 invoices that needed to be paid. He did not mention that GW Sg. had lost its  
9 banking privileges and that they started using Giga Watt’s multiple bank accounts  
10 “to land the money.”

11 117. In October 2018, Raphael Sofair commenced a RICO action against  
12 Giga Watt, GW Sg., and Carlson for claims arising from GW Sg.’s sale of miners  
13 after the GW ICO ended. According to the allegations, after the GW ICO ended,  
14 GW Sg. sold miners without regard to Giga Watt’s capacity to host miners. When  
15 Giga Watt informed these miner purchasers that their miners would be deployed  
16 after WTT Token holders’ miners were deployed, they sued. Sofair’s attorney is  
17 currently also representing Jun Dam in litigation pending in the U.S. District  
18 Court, E.D. Washington against Perkins, Case No. 20-264.

19 118. That same month, October 2018, the DC PUD provided one-year’s  
20 notice of intent to terminate the Pangborn Power Contract and the Port  
21 commenced eviction proceedings.

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24 FIRST AMENDED COMPLAINT – Page 39  
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119. On November 19, 2018, Kuzenny signed Giga Watt's petition for voluntary relief under chapter 11 of the Bankruptcy Code.

## **FIRST CLAIM FOR RELIEF**

*(Breach of Fiduciary Duty – Perkins)*

120. Plaintiff incorporates all prior allegations by reference as if set forth fully herein.

121. Perkins owed Giga Watt a fiduciary duty. It was Giga Watt's attorney.

122. Perkins knew the terms of the White Paper given that it had agreed to provide final review of the White Paper.

123. Perkins failed to act strictly in accordance with the provisions of the Escrow and failed to disburse the Escrow proceeds with scrupulous honesty, skill, and diligence.

124. Perkins breached its fiduciary duty by disbursing funds from the Escrow to GW Sg. contrary to the Escrow terms, which required that funds be released only in step with the construction of Giga Watt's facilities.

125. Perkins further breached its fiduciary duty by acquiescing to Grant's fraudulent proposal that GW Sg. would "issue" the WTT Tokens and therefore, implicitly, collect the WTT Token sales proceeds. This arrangement violated the terms of the White Paper, which provided that WTT Token holders and miner purchasers were investing in Giga Watt's future facilities based on Giga Watt's purported skill and experience in cryptocurrency mining. GW Sg. had been pitched as Giga Watt's partner which supplied the miners that WTT Token

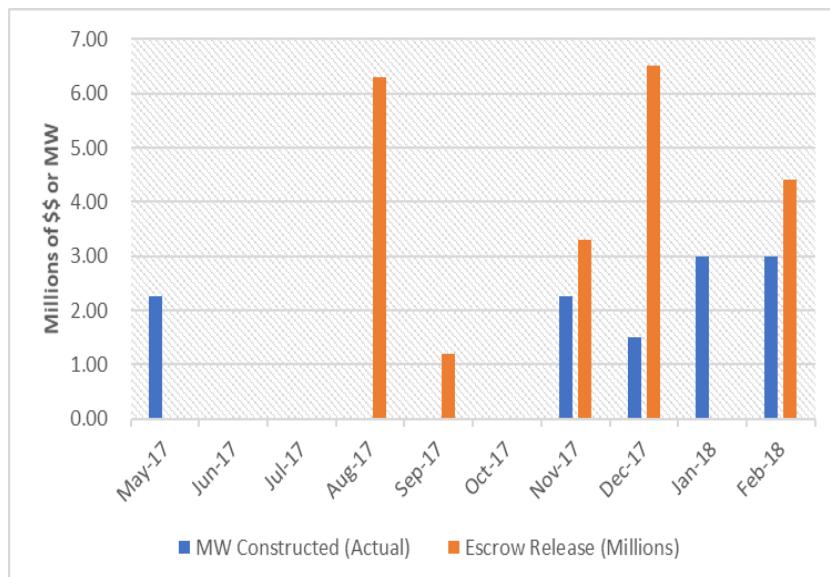
FIRST AMENDED COMPLAINT – Page 40

holders would use in Giga Watt's future facilities. The White Paper did not provide that GW Sg. would collect the WTT Token sales proceeds.

126. A summary of the Escrow withdrawals follows:

Date	Amount	Paid To
8/8/2017	(\$5,400,000.00)	GW Sg.
8/19/2017	(\$900,000.00)	GW Sg.
9/25/2017	(\$1,200,000.00)	GW Sg.
11/7/2017	(\$3,300,000.00)	GW Sg.
12/19/2017	(\$2,000,000.00)	Giga Watt
12/26/2017	(\$4,500,000.00)	Giga Watt
2/9/2018	(\$1,148,057.58)	Giga Watt
2/22/2018	(\$3,217,700.00)	Giga Watt
	(\$21,665,757.58)	

127. The following chart below compares the amount of power that Giga Watt was operating with the amount disbursed from Escrow:



1       128. The amount of capacity constructed by Giga Watt and the dates of  
2 construction are based on representations made by Giga Watt to the Securities and  
3 Exchange Commission in its letter dated August 2, 2017 and on power summaries  
4 from the Grant County Public Utility District.

5       129. Perkins' conduct increased Giga Watt's liability in putative class  
6 actions suits that have been filed to rescind the WTT token purchases as part of an  
7 unregistered securities offering pursuant to section 12(a)(1) of the United States  
8 Securities Act of 1933. 15 U.S.C. §§ 77(l) and (e). Giga Watt should have been in  
9 a position to buy back approximately \$10.8 million in WTT Tokens out of the  
10 Escrow. Perkins' breach of the Escrow deprived Giga Watt of that recourse and  
11 increased Giga Watt's rescission liability under the U.S. securities laws.

12       130. Further, a partnership is liable when a partner misappropriates funds  
13 received from a non-partner. RCW 25.05.120. Here, GW Sg., which the White  
14 Paper described as Giga Watt's partner, misappropriated approximately \$22  
15 million held in Escrow by Perkins. Therefore, when Perkins violated the Escrow  
16 and disbursed Escrow funds before capacity was built out, Giga Watt immediately  
17 became liable for that misappropriation. Perkins' breach of the Escrow  
18 proximately caused that liability.

19       131. Giga Watt, which was a start-up could not endure the loss of \$10.8  
20 million in investors' funds (approximately half the total WTT Token sales  
21 proceeds). Within a year of the GW ICO's close, Giga Watt was a defendant in  
22 multiple federal securities class actions in which the plaintiffs alleged, *inter alia*,

24 FIRST AMENDED COMPLAINT – Page 42

that their WTT Tokens were never backed by power at Giga Watt, yet the money was dissipated from the Escrow.

132. Perkins' failure to rebuff GW Sg.'s raid on the Escrow – which would have required no more than saying no and asking about the construction schedule – increased Giga Watt's rescission liability by \$10.8 million plus interest. Furthermore, allowing the approximately \$22 million in escrow proceeds to be misappropriated is a significant blow to any company, let alone a start-up such as Giga Watt. The Escrow breach guaranteed Giga Watt's collapse and this bankruptcy case in which non-insider creditors have filed approximately \$75 million in claims.

133. Based on the foregoing, Perkins is jointly and severally liable with the other Defendants to Giga Watt for not less than \$22 million plus interest, and lost profits.

## **SECOND CLAIM FOR RELIEF**

(Aiding and Abetting Breach of Fiduciary Duty – Perkins)

134. Plaintiff incorporates all prior allegations by reference as if set forth fully herein.

135. GW Sg. was Giga Watt's partner in the Giga Watt Project and thus owed Giga Watt a fiduciary duty.

136. Perkins knew of GW Sg.'s fiduciary duty because the relationship was described in the White Paper and Perkins was responsible for providing final review of the White Paper.

FIRST AMENDED COMPLAINT – Page 43

137. Perkins knew the Escrow terms as set forth in the White Paper.

138. Perkins separately owed Giga Watt a fiduciary duty as set forth in the First Claim of Relief, herein, which allegations are incorporated herein by reference as if set forth fully herein.

139. Perkins substantially assisted GW Sg.'s breach of fiduciary duty by acquiescing to GW Sg.'s usurpation of the WTT Token sales proceeds and by disbursing funds from the Escrow regardless of Giga Watt's operating capacity.

140. Perkins' conduct proximately caused damage to Giga Watt as set forth in the First Claim of Relief herein, which allegations are incorporated herein by reference as if set forth fully herein.

## **THIRD CLAIM FOR RELIEF**

*(Breach of Trust – RCW 11.98.085 – Perkins)*

141. Plaintiff incorporates all prior allegations by reference as if set forth fully herein.

142. The Escrow was a trust. Perkins held the WTT Token sales proceeds in the Escrow for Giga Watt's benefit.

143. Perkins breached the Escrow by disbursing funds regardless of the stage of construction of Giga Watt's cryptocurrency mining facilities.

144. Perkins is liable for the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred. That amount is \$10.8 million.

FIRST AMENDED COMPLAINT – Page 44

**FOURTH CLAIM FOR RELIEF**  
*(Breach of Fiduciary Duty – GW Sg.)*

145. Plaintiff incorporates all prior allegations by reference as if set forth fully herein.

146. GW Sg. owed a fiduciary duty to Giga Watt as Giga Watt's partner in the Giga Watt Project.

147. GW Sg. breached its fiduciary duty to Giga Watt by withdrawing approximately \$22 million from the escrow out of step with construction.

148. GW Sg.'s conduct and Cryptonomos' conduct proximately caused damage to Giga Watt as set forth in the First Claim of Relief herein, which allegations are incorporated herein by reference as if set forth fully herein.

**FIFTH CLAIM FOR RELIEF**  
*(Breach of Fiduciary Duty – Usmanov)*

149. Plaintiff incorporates all prior allegations by reference as if set forth fully herein.

150. As the Chief Financial Officer of Giga Watt from May 2017 to September 2018, Usmanov was an officer with discretionary authority.

151. Usmanov failed to exercise his duties under that authority: (a) in good faith, (b) in a manner that Usmanov reasonably believed to be in the best interests of Giga Watt and (c) with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

152. Furthermore, Usmanov's conduct constitutes a reckless, willful, and knowing breach of fiduciary duty and therefore constitutes fraud or defalcation.

FIRST AMENDED COMPLAINT – Page 45

1       153. Usmanov executed the Russian team’s plan to strip Giga Watt of its  
2 revenues by forcing Carlson to turn over the keys to the Giga Watt cryptocurrency  
3 wallet.

4       154. Usmanov caused Giga Watt to pay a \$180,000 annual salary to  
5 Kuzenny although Kuzenny had “no actual duties” and was only being called the  
6 Chief Operating Officer so that he could obtain a work visa under false pretenses.  
7 Relatedly, Usmanov reduced Giga Watt to an instrument of immigration fraud.

8       155. Usmanov facilitated premature releases from the Escrow by ghost-  
9 writing letters to Perkins to release Escrow funds when he knew the Escrow had  
10 already been improperly depleted and no further releases should be made.

11       156. He helped Kuzenny cover up the impropriety of GW Sg.’s: (a)  
12 possession and transfer of \$1.95 million in WTT Token sales proceeds; (b) receipt  
13 of \$5.4 million from the Escrow; and (c) receipt of \$3.3 million from the Escrow.

14       157. Usmanov’s conduct proximately caused damage to Giga Watt as set  
15 forth in the First Claim of Relief herein, which allegations are incorporated herein  
16 by reference as if set forth fully herein.

17       158. Kuzenny actively worked to obstruct the Trustee’s investigation of  
18 Giga Watt’s affairs, as alleged herein.

19       159. Perkins representation to the Trustee that it had not represented Giga  
20 Watt further prevented the Trustee from piecing together Usmanov’s role.

21       160. The Trustee discovered Usmanov’s role in July 2022 when pursuant  
22 to a subpoena and turnover demand it obtained documents that a third-party

24 FIRST AMENDED COMPLAINT – Page 46

1 vendor for Giga Watt had imaged in 2018. These documents are voluminous –  
2 more than 220 gigabytes.

3 **SIXTH CLAIM OF RELIEF**

4 *(Aiding and Abetting Breach of Fiduciary Duty – Kuzenny & Usmanov)*

5 161. Plaintiff incorporates all prior allegations by reference as if set forth  
fully herein.

6 162. Kuzenny and Usmanov both knew that GW Sg. and Giga Watt were  
7 partners in the Giga Watt Project and that the White Paper required Giga Watt to  
8 complete the requisite construction before WTT Token sales proceeds could be  
9 released.

10 163. Despite this knowledge, Kuzenny requested disbursements of Escrow  
11 proceeds to GW Sg. before Giga Watt had completed the requisite construction,  
12 contrary to the terms of the Escrow. These approvals substantially assisted GW  
13 Sg.’s effort to raid the Escrow in breach of its fiduciary duty to Giga Watt.

14 164. Despite this knowledge, Usmanov ghost wrote letters pretending to  
15 be Mikhaylyuta asking for releases before the requisite construction had been  
16 built, contrary to the terms of the Escrow. These letters substantially assisted GW  
17 Sg.’s effort to raid the Escrow in breach of its fiduciary duty to Giga Watt.

18 165. GW Sg.’s breach of fiduciary duty, and Kuzenny and Usmanov’s  
19 aiding and abetting that breach, proximately caused damage to Giga Watt as  
20 alleged in the First Claim of Relief which allegations are incorporated herein by  
21 reference.

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24 FIRST AMENDED COMPLAINT – Page 47  
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## PRAYER

Wherefore, the Plaintiff respectfully requests that the Court:

1. Enter judgment in Plaintiff's favor and against the Defendants for joint and several liability in an amount to be proved at trial, plus prejudgment and post-judgment interest, costs and attorneys' fees; and

2. Grant such other and further relief as the Court deems necessary and just.

Dated: September 8, 2022 POTOMAC LAW GROUP PLLC

By: s/ Pamela M. Egan  
Pamela M. Egan (WSBA No. 54736)  
*Attorneys for Mark D. Waldron, Chapter 7  
Trustee, Plaintiff*

FIRST AMENDED COMPLAINT – Page 48